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ABSTRACT

These suggestions for formulating school district policies governing the confidentiality and release of student records are based on the Family Educational Rights and Privacy Act (the Buckley amendment) and on relevant Arizona state law. A checklist, which covers the major section of the Family Educational Rights and Privacy Act, is designed to allow educators to evaluate their districts' current safeguards and policies regarding the confidentiality of student records. The format is a simple "yes" or "no" response; if "no" is the answer to any question, then the district's policies and practices do not match those of the federal law. The addenda include the text of the Buckley amendment, Arizona state law, the state attorney general's decisions relating to privacy rights, and guidelines for school district retention and disposal of records. (Author)

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SUGGESTIONS FOR COMPLIANCE

WITH

PRIVACY RIGHTS OF PARENTS AND STUDENTS

(BUCKLEY AMENDMENTS)

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June 1977

EA 010 325

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SUGGESTIONS FOR FORMULATING POLICIES

GOVERNING STUDENT RECORDS

SUGGESTIONS FOR FORMULATING POLICIES
GOVERNING STUDENT RECORDS

BACKGROUND:

I. The schools collect and maintain student records to provide for the growth and development of individual students, to provide information to parents and authorized staff, and to provide a basis for the evaluation and improvement of school programs.

II. It is the responsibility of each school to preserve the rights of privacy of students and parents.

III. [Legal Reference: ARS 15-151 - 154, Federal Register Vol. 41, #118 (20 USC. 1230, 1232G)]

ADMINISTRATIVE RESPONSIBILITIES FOR STUDENT RECORDS:

I. The Chief Administrative Officers or their designees shall be directly responsible to the district's governing board for the observance of law, policy, regulations, and directives in the collection of information for student records, their maintenance and protection, the proper dissemination of information contained therein, and the forwarding of records for official purposes to higher authority when so directed.

II. The Chief or designee concerned shall make maximum provision for protection of records from review by unauthorized school and non-school personnel, and for maximum physical security of such records.

III. The Chief Administrative Officers of the local districts or the designees concerned shall ensure that school staff under their jurisdiction receive periodic instruction and training regarding the privacy rights of students and parents, and the confidential handling of student records.

POLICY:

Task Force Recommendation: Task Force recommends that each district review their local district policies to see if they conform with Buckley Regulations.

The implementing regulations for the Family Education Rights and Privacy Act require each educational agency or institution to formulate and adopt a policy of:

I. Informing parents of students and eligible students of their rights,

II. Permitting parents of students and eligible students to inspect and review education records,

III. Not disclosing personally identifiable information without prior written consent,

IV. Maintaining the record of disclosures, and

V. Providing an opportunity to seek the correction of education records.

I. Informing Parents of Students and Eligible Students of Their Rights

A. Each school must provide to parents and eligible students annual notification of their rights to inspect and review student educational records. The notification should be distributed at the beginning of the school year and must be in the language of the parent or eligible student. The exact nature of the communique and the procedures for its delivery may be determined by the principal.

B. Each educational agency or institution must give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of:

1. their rights under Section 438 of the General Education Provisions Act, as amended, the implementing regulations, and the local policy; the notice should also inform parents of students and eligible students of the locations where copies of the policy may be obtained;

2. their rights to file complaints concerning alleged failures by the educational agency or institution to comply with Section 438 and implementing regulations.

C. Agencies and institutions of elementary and secondary education must provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

II. Parents Rights to Inspect and Review Records

A. Subject to the limitations listed below, each educational agency or institution must permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution the right to inspect and review the education records of the student.

1. The agency or institution must comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

2. The right to inspect and review includes the right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records.

3. The right to inspect and review includes the right to obtain copies of the records where failure to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review. (Section 99.11, Subpart B, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. These are also requirements specified in Section 121a.15(b)(2)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

B. Fees

An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students and eligible students, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review. CAUTION: An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student. (Section 99.8, Subpart A, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also specified in Section 121a.15(b)(2)(A)(B) ..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

C. Either or Both Parents Have Rights

An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary. (Section 99.11, Subpart B, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also specified in Section 121a.15(b)(2)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

D. Limitations on These Rights

An institution of postsecondary education is not required to permit a student to inspect and review the following records:

1. Financial records and statements of their parents or any information contained therein;

2. Confidential letters and confidential statements of recommendation which were placed in the education record prior to January 1, 1975, provided that the letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and the letters and statements are used only for the purposes for which they were specifically intended;

3. Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records after January 1, 1975, respecting admission to an educational institution, application for employment, or respecting the receipt of an honor or honorary recognition, provided that the student has waived his or her right to inspect and review those letters and recommendations. (Section 99.12, Subpart B, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976)

E. Further Limits

If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student. (Section 99.12, Subpart B, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also specified in Section 121a.15(b)(2)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

III. Prior Consent for Disclosure Needed

A. Prior Consent for Disclosure

An educational agency or institution must obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of the student, other than directory information except as indicated below. The required written consent must be signed and dated by the parent or eligible student and should include:

1. a specification of the records to be disclosed;

2. the purpose or purposes of the disclosure;

3. the party or class of parties to whom the disclosure may be made.

Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving the consent has the authority to do so unless the agency or institution has been provided with evidence of legal documents to the contrary. When a disclosure is made, the educational agency or institution must, upon request, provide a copy of the record which is disclosed to the parent of the student or to the eligible student, and to the student who is not an eligible student if so requested by the student's parent. (Section 99.30, Subpart D, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Portions also included in Section 121a.15(b)(4)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

B. Prior Consent Not Required

Student information may be released to the following groups without parental permission:

1. A local district may release records to officials of other school systems in which the student seeks or intends to enroll, providing the local district has a formal policy that it forwards educational records on request to a school in which the student intends to enroll and has notified parents of this policy.

   Caveat: ARS 15-152.3 does not express the specific right for a school district to use this method.

2. A local district may disclose personally identifiable information from the records of a student without the written consent of the parent of the student and the eligible student to:

   a. the Comptroller General of the United States;

   b. the Secretary of Health, Education and Welfare;

   c. the Commissioner, the Director of the National Institute of Education, or the Assisting Secretary for Education; and

   d. state educational authorities

   provided that the request is in connection with the audit and evaluation of federally-supported education programs.

   Caveat: Arizona Attorney General Opinion R-75-608 would appear to conflict with this section.

3. To other school officials, including teachers, within the district who have been authorized by the district as having legitimate educational interest in the records.

4. State or local officials to whom information is required by a law passed prior to November 19, 1974.

5. To agencies requiring information in connection with a student's application for or receipt of financial aid.

6. To accrediting organizations in order to carry out their accrediting function.

   Caveat: State laws do not expressly grant this right.

7. To parents or guardians of a dependent student or qualified student (see section - Parents Rights to Inspect and Review).

8. To comply with a judicial order or lawfully issued subpoena, provided that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith.

9. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations.

10. Disclosure in Health and Safety Emergencies

An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. The factors to be taken into account in determining whether personally identifiable information from the education records may be disclosed under this section include the following:

a. the seriousness of the threat to the health and safety of the student or other individuals;

b. the need for the information to meet the emergency;

c. whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

d. the extent to which time is of the essence in dealing with the emergency.

(Section 99.36, Subpart D, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976)

Caveat: State laws do not expressly grant this right.

11. Disclosure of Directory Information

An educational agency or institution which wishes to designate directory information must give public notice of (a) the categories of personally identifiable information which the institution has designated as directory information, (b) the right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories, and (c) the period of time within which the parent or eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student. An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information as defined in Section 99.3 (see Section 2 of this manual) and designated as described above. An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution. (Section 99.37, Subpart D, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976)

Caveat: The Maricopa County Attorney has ruled that there is no directory information lawful under Arizona law.

IV. Maintaining the Record of Disclosures

A. For each request for and each disclosure of personally identifiable information from the education records of a student, the educational agency or institution must maintain a record of disclosures which is kept with the education record of the student. The record of disclosures should indicate the names of the parties who have requested or obtained personally identifiable information and the legitimate interests these parties had in requesting or obtaining the information.

B. The disclosure record need not include:

1. Disclosures to a parent of a student or an eligible student;

2. Disclosure pursuant to a written consent when the consent is specific with respect to the party or parties to whom the disclosure is to be made.

3. Disclosure to school officials within the local institution or agency having a legitimate educational interest.

4. Disclosure of directory information.

C. The record of disclosure may be inspected by the parent of the student or the eligible student, the school official and his or her assistants who are responsible for the custody of the records, and for the purpose of auditing the recordkeeping procedures of the educational agency or institution. (Section 99.32, Subpart D, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also included in Section 121a.15(b)(2)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

V. Correction of Education Records

A. Request to Amend Records

1. The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

2. The educational agency or institution then decides whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

3. If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request, it so informs the parent of the student or the eligible student of the refusal, and advises the parent or the eligible student of the right to a hearing. (Section 99.20, Subpart C, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also included in Section 121a.15(b)(3)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

B. Right to a Hearing

An educational agency or institution will, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to ensure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students.

1. If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it amends the education records of the student accordingly and so informs the parent of the student or the eligible student in writing.

2. If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it informs the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution. Any explanation placed in the education records of the student must be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and if the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation must also be disclosed to that party. (Section 99.21, Subpart C, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also included in Section 121a.15(b)(3)..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976)

C. Conduct of a Hearing

The hearing will be conducted according to procedures which include at least the following:

1. The hearing will be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student will be given notice of the date, place and time reasonably in advance of the hearing;

2. The hearing will be conducted by any party, including an official of the ecucational agency or institution, who does not have a direct interest in the outcome of the hearing;

3. The parent of the student or the eligible student will be afforded a full and fair opportunity to present evidence relevant to the issues and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

4. The educational agency or institution will make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

5. The decision of the agency or institution will be based solely upon the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision. (Section 99.22, Subpart C, Privacy Rights..., Federal Register, Vol. 41, No. 118, June 17, 1976. Also included in Section 121a.15(b)(3) ..., Education of the Handicapped, Federal Register, Vol. 41, No. 40, February 27, 1976.

CHECKLIST FOR FAMILY RIGHTS AND PRIVACY ACT

CHECKLIST FOR FAMILY RIGHTS AND PRIVACY ACT

The checklist is separated into five (5) separate sections dealing with Requirements under the "Buckley Amendment."

This checklist is designed to allow you to evaluate your current Safeguards and Policies Regarding the Confidentiality of Student Records. The format for the checklist is a simple Yes or No response. If you answer "No" to any question, then you have Practices and Policies that do not match those of the Family Rights and Privacy Act. All marginal citations listed are from the Federal Register, June 17, 1976, Vol. 41 #118.

		YES	NO
	I Requirement to Inform Parents:		
99.6	A. Are parents informed annually of their rights concerning student records?	___	___
	B. Are parents informed of the right to inspect and review the education records of the student, including:		
99.5(2)i	(a) A statement of the procedure to be followed by a parent who requests to review student records;		
ii	(b) a description of the circumstances in which the school feels it has a legitimate cause to deny a request for a copy of (but not access to) such records;		
iii	(c) a schedule of fees for copies, and		
iv	(d) a listing of the types and locations of education records maintained by the school district and the titles and addresses of the officials responsible for those record	___	___
99.5	C. Are policy statements, including all of the above information, stated in writing and made available to parents upon request?	___	___
99.6(b)	D. Are parents whose primary language is not English informed in their primary language of their rights?	___	___
9.34(a)1.(ii)	E. Is a notice included in policy statement that education records will be forwarded on request to a school in which a student seeks or intends to enroll? (Mandatory only if you choose to adopt this policy.)	___	___
	F. Does your notice include that information which the District deems to be directory information?	___	___

		YES	NO
	II Right to Inspect and Review Records:		
	A. Do you permit the parents of students or eligible students the right to inspect and review the educational records of the child?	___	___
99.11.b.(1)	B. Are parents given a response to reasonable requests for explanations and interpretations of the records?	___	___
(2)	C. Are parents allowed to obtain copies of the records where failure to provide copies would effectively prevent a parent from exercising the right to inspect and review the education records?	___	___
99.12.b.	D. If the education records of a student contain information on more than one student, is the parent allowed to review only the specific information which pertains to that student?	___	___
99.11.(a)	E. Are parents allowed access to student records within forty-five days of their request?	___	___
99.13.(a)	F. Are education records maintained if there is an outstanding request to inspect and review them?	___	___
99.34.(a)2.	G. Are parents provided, upon request, with a copy of education records which have been transferred?	___	___
99.4.(a)	H. Are students over 18 accorded the same rights with respect to their student records as are accorded to parents of students under 18?	___	___
	I. Are you aware that you may charge a fee for copies of education records provided the fee does not prevent parents or students from reviewing and inspecting their records?	___	___
	J. Are you aware that you may not charge a fee to search for or retrieve the education records of a student?	___	___
	K. Are you aware that either, or both, parents have the right to inspect and review the education records of the student unless there is a state law, court order, or other legally binding instrument which provides otherwise?	___	___

		YES	NO
	III Disclosure of Personally Identifiable Information:		
99.30.(a)(1)	A. Does school policy prohibit the disclosure of personally identifiable information from students records without the prior written consent of the parent, unless allowed by law?	___	___
99.32.	B. Is a record of disclosures of personally identifiable information kept with the student records and maintained as long as the student records are maintained?	___	___
99.32.(c)(1)	C. Are parents allowed to inspect the record of disclosures of personally identifiable information?	___	___
99.21.(d)(2)	D. If a parent has attached an explanation of disagreement with information contained in student records, is that explanation included in any disclosure of the education records?	___	___
9.30.(a)(1)	E. Is the written consent of the parent obtained before disclosing personally identifiable information, unless allowed by law?	___	___
99.30.(c)	F. Is the written consent specifically for disclosure signed and dated by the parent?	___	___
99.30.(c)	G. Does the written consent for disclosure include: (a) a specification of the records to be disclosed; (b) the purpose(s) of the disclosure; and (c) the party or class of parties to whom the disclosure may be made?	___	___
99.33.(a)	H. Are parties to whom disclosures are made informed that they may not disclose the information without prior written consent of the parent?	___	___
99.[illegible].(a)	I. Does each record of disclosure indicate: (a) the parties requesting the information; and (b) the legitimate interest these parties had in requesting or obtaining the information?	___	___

		YES	NO
	III - Continued		
99.34.(a)1.(ii)	J. Is a notice included in your policy statement that education records will be forwarded on request to a school in which a student seeks or intends to enroll?	____	____
	K. Are parents provided, upon request, with a copy of education records that have been transferred?	____	____
	IV Maintaining a Record of Disclosure:		
	A. Do you keep records of disclosure of disclosure on each request for and each disclosure of personally identifiable information?	____	____
	B. Do such records include the names of the parties who requested or obtained personally identifiable information?	____	____
	C. Do such records include the listing of legitimate interests of parties who requested or obtained personally identifiable information?	____	____
	D. Do you allow the record of disclosure to be inspected by the parents of students and eligible students, as well as officials charged with auditing or maintaining the system?	____	____
	V Right to Request Amendment of Education Records:		
99.20.	A. Are parents provided an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing?	____	____
99.21.(c)	B. Are the parents permitted to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the school district not to amend the records?	____	____
99.21.(d)(1)	C. Is the parent explanation maintained as part of the education records as long as the records are maintained by the school district?	____	____

		YES	NO
	V - Continued		
99.21.(d)(2)	D. Is the explanation included in any disclosure of the education records?	___	___
99.20.(a)	E. Are parents allowed to request that records maintaining material believed to be inaccurate or misleading, or in violation of the rights of the student be amended?	___	___
99.20.(a)	F. If the school district refuses to amend the records, are parents so informed and advised of their right to a hearing?	___	___
99.20.	G. Are parents provided an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing?	___	___
99.20.(c)	H. If the school refuses to amend the records, are parents so informed and advised of their right to a hearing?	___	___
99.20.(b)	I. Are parents informed within a reasonable time, in writing, of the results of the hearing, including a summary of the evidence and the reasons for the decision?	___	___
99.22.(a)	J. Is the hearing held within a reasonable time after the request is made?	___	___
99.22.(a)	K. Are the parents given notice of the date, place, and time of the hearing reasonably in advance of the hearing?	___	___
99.22.(b)	L. Is the hearing conducted by a party who does not have a direct interest in the outcome of the hearing?	___	___
99.22.(c)	M. Are parents afforded a full and fair opportunity to present evidence and to be assisted or represented by individuals of their choice at their expense, including an attorney?	___	___

ADDENDA

ADDENDA

A. State Law ARS 15-151 - 154

B. Federal Regulations: Privacy Rights of Parents and Students (Buckley amendment)

C. Attorney General Decisions Relating To Privacy Rights

D. Guidelines for School District Retention and Disposal of Records Compiled by the Division of Library Archives and Public Records, the Auditor General, and Arizona Association of School Business Officials

CHAPTER 1.1. - RIGHTS OF PARENTS AND GUARDIANS TO RECORDS

ARTICLE 1. GENERAL PROVISIONS

Sec.
15-151. Definitions.

15-152. Permissible use of pupil records.

15-153. Access to pupil records by parents or guardian.

15-154. Correction of pupil records.

ARTICLE 1. GENERAL PROVISIONS

§ 15-151. Definitions

In this chapter, unless the context otherwise requires:

1. "Pupil" means any student in the public common or public high school.
2. "Pupil records" means all the information of a personal nature on the pupil recorded and retained by the school and which is used or expected to be used in whole or in part by the school or any other school or agency. Pupil records shall not be construed to include the work notes of a teacher or other professional unless such notes are used or expected to be used by anyone other than the professional.
3. "School" means the public common or public high school. Added Laws 1974, Ch. 163, § 1.

§ 15-152. Permissible use of pupil records

Pupil records are considered professional and confidential and shall be available under the following circumstances:

1. To the parents or guardian of the pupil, unless a parent's parental rights have been severed by a court.
2. To the professional staff of the school district in which the information was obtained.
3. In accordance with written instructions of a parent or guardian to transfer the records to another school, institution or agency.
4. To any state or federal agency as long as such records do not identify the student and upon the approval of the local school district board.
5. With respect to grade transcripts, to any other school or educational institution to which the student is attending or has applied for admittance.
6. To a pupil or person over the age of eighteen whose records are maintained by the school. Added Laws 1974, Ch. 163, § 1.

§ 15-153. Access to pupil records by parents or guardian

A. Upon confirming a parent or guardian's identity, the authorized personnel of a school district shall, upon request, make available to the parent or guardian of a pupil the content of the pupil's records.

B. The parent or guardian shall be permitted to be accompanied by one other person of his choosing at such time as the parent or guardian reviews the content of the pupil's records. Added Laws 1974, Ch. 163, § 1.

§ 15-154. Correction of pupil records

If any parent or guardian disputes the accuracy of any item in the pupil's records, he may give notice in writing to the designated school employee specifying in what manner he believes the records are inaccurate and shall have a right to attach a written response to any disputed item. Added Laws 1974, Ch. 163, § 2.

FEDERAL LAW: 20 U.S.C. 1232g

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS[1]

Sec. 438. (a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations--

(I) respecting admission to any educational agency or institution.

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

[1]20 U.S.C. 1232g

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I), are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such

officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(20 U.S.C. 1232g) Enacted August 21, 1974, P.L. 93-380, sec. 513(a), 88 Stat. 571, 574; amended December 31, 1974, P.L. 93-568, sec. 2, 88 stat. 1858, 1860.

PROTECTION OF PUPIL RIGHTS

Sec. 439. All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

(20 U.S.C. 1232h) Enacted August 21, 1974, P.L. 93-380, sec. 514(a), 88 Stat. 574.

LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

Sec. 440 Except as provided in section 438(b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any apolicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(20 U.S.C. 1232i) Enacted August 21, 1974, P.L. 93-380, sec. 515(a), 88 Stat. 574.

Title 45--Public Welfare

SUBTITLE A--DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
GENERAL ADMINISTRATION

PART 99--PRIVACY RIGHT OF PARENTS AND STUDENTS

Final Rule on Education Records

Effective date. These regulations shall be effective on June 17, 1976.

Dated: June 8, 1976

DAVID MATHEWS,
Secretary of Health,
Education, and Welfare.

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AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.

Subpart A--General

§99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law].

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program, and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

§99.2 Purpose

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the

General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: The student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

[20 U.S.C. 1232g(b)(1)]

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in §99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; Provided, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(d))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in §99.31 (a) (4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at

which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§99.65-99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list or personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: Handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

§99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student thereafter only be accorded to and required of the

eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of §99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of-

(1) Informing parents of students or eligible students of their rights under §99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with §99.11, including at least;

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §99.31 and §99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under §99.31 (a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under §99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by §99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C and permitting the parent of a student or an eligible student to place a

statement in the education records of the student as provided in §99.21 (c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

[20 U.S.C. 1232g (e) and (f)]

§99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonable likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under §99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under §99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

[20 U.S.C. 1232g (3)]

§99.7 Limitations on waivers.

(a) Subject to the limitations in this section and §99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act of this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in §99.12 (a)(3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

[20 U.S.C. 1232g (a)(1)(B) and (C)]

§99.8 Fees

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; Provided, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

[20 U.S.C. 1232g(2)]

Subpart B—Inspection and Review of Education Records

§99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by §99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; Provided, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition;

Provided, That the student has waived his or her right to inspect and review those letters and statements of recommendation under §99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

§99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act of this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under §99.11;

(b) Explanations placed in the education record under §99.21 shall be maintained as provided in §99.21 (d), and

(c) The record of access required under §99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request

it shall so inform the parent of the student of the eligible student of the refusal, and advise the parent or the eligible student of the right to hearing under §99.21

[20 U.S.C. 1232g(a)(2)]

§99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with §99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party the explanation shall also be disclosed to that party.

[20 U.S.C. 1232g(a)(2)]

§99.22 Conduct of the hearing.

The hearing required to be held by §99.21 (a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under §99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

[20 U.S.C. 1232g(a)(2))

Subpart D--Disclosure of Personally Identifiable Information From Education Records

§99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in §99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

[20 U.S.C. 1232g(b)(1) and (b)(2)(A)]

§99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is--

(1) To other school officials, including teachers within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in §99.34;

(3) Subject to the conditions set forth in §99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary,

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; Provided, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; Provided, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted: the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; Provided, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in §99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)]

§99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identi-

fiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interest these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under §99.31 (a)(1), or to disclosures of directory information under §99.37.

(c) The record of disclosures may be inspected;

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in §99.31 (a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

§99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under §99.31 with the understanding that the information will be redisclosed to other parties under that section; Provided, That the recordkeeping requirements of §99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under §99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(4)(B)]

§99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to §99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under §99.5 that it forward education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; Provided, That the disclosure meets the requirements of paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)(B)]

§99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in §99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under §99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in §99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

[20 U.S.C. 1232g(b)(3)]

§99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency: and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

[20 U.S.C. 1232g(b)(1)(i)]

§99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally indentifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in §99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

[20 U.S.C. 1232g(a)(5)(A) and (B[]

Subpart E--Enforcement

§99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§99.65-99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section; The Family Educational Right and Privacy Act Office (FERPA), Department of Health, Education and Welfare, 330 Independence Ave. SW., Washington, D.C. 20201

(20 U.S.C. 1232g(g))

§99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office

designated under §99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

§99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g(f) and (g))

§99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section the matter will be referred to the Review Board for a hearing under §§99.64-99.67, inclusive.

(20 U.S.C. 1232g(f))

§99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in

§99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

§99.65 Hearing procedures.

(a) Panels. The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under §99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) Procedural rules. (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party; (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimoney, the Panel shall afford each party an opportunity, which shall include, in addition to provision required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceeding;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

§99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to §99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examined under 5 U.S.C. 3105.

(20 U.S.C. 1232g(6))

§99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initital decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceeding.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

[FR Doc.76-17309 Filed 6-16-76;8:45 am]

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

April 14, 1976

Q. Dale Hatch, Esq.
Deputy County Attorney
Maricopa County Attorney's Office
101 West Jefferson
Phoenix, Arizona 85003

Dear Mr. Hatch:

We have reviewed your letter opinion dated November 19, 1975, addressed to Mr. Robert Dunda, Principal, Andalucia School, which answered several questions pertaining to the right of access of parents to the school records of their children. We concur in the results you reach with respect to all of the questions.

We would add, however, that the regulations which you referred to in your letter as implementing 20 U.S.C. § 1232g, the "Family Educational Rights and Privacy Act," were only proposed regulations. But one section of the implementing regulations has been adopted recently, and was published in the Federal Register of March 2, 1976 (Vol. 41, No. 42, pages 9062 through 9064).

To clarify one additional point, a school should not delay the requested access of parents to their children's school records for longer than 45 days, and may be required to grant access in a shorter period of time, depending upon the circumstances. This subject is covered in 20 U.S.C. § 1232g(a)(1)(A), which states the following in pertinent part:

> Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

Should you have any questions concerning the foregoing, please let us know.

Sincerely,

BRUCE E. BABBITT
Attorney General

BEB:ASK:lg

OFFICE OF THE MARICOPA COUNTY ATTORNEY
MOISE BERGER COUNTY ATTORNEY
400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA

November 19, 1975 School Opinion No. 75-33

Mr. Robert Frank Dunda, Principal
Andalucia School
4702 West Campbell Avenue
Phoenix, Arizona 85031

Dear Mr. Dunda:

This opinion is in response to your request for an opinion on the following questions in light of the recent proposed regulations of the Department of Health, Education and Welfare concerning the rights of parents to see their children's records in the public schools.

1. In the event parents are separated, but not legally divorced, does the parent with whom the child is not living, have the right to the child's records? YES

2. In the event of a foster home situation - wherein the child has not been legally severed from the natural parents, do the natural parents have right to access? YES

3. In the event of a legal separation - but not a divorce, does the parent with whom the child does not live have the right to access? YES

4. In the event the child has a legal guardian, do the natural parents have a right to access? YES

5. In the event parents are legally divorced, does the parent who does not have legal custody but who does contribute to the child's welfare and make economic contribution to the child and has visitation rights, have right to access? YES

ANSWERS:

1. Yes.

2. Yes.

3. Yes.

4. Yes.

5. Yes.

DISCUSSION:

U.S.A.C. 20, Sec. 1232(g) requires a school district to allow parents to see school records pertaining to their child or children. Proposed implementing regulations of the Department of Health, Education and Welfare do not define "parents" in the situations you present in your questions. Apparently by the nature of your questions, you are seeking further amplification of the term "parents" as used in the regulations.

In passing, I would note that Arizona has a similar statute with respect to the availability of records to parents. A.R.S. §15-152 requires school districts to allow parents to see the records of their children in public schools.

It appears to me that the intent of the Arizona Legislature and Congress was to keep pupil records confidential but to give those persons who have a right to know the opportunity to see and correct the records. Natural parents have the right to see what their children are doing in school as long as their rights to the children have not been severed by a court. There are two ways in Arizona to sever the parent-child relationship: One is A.R.S. §8-101 et seq. and the other is by a court hearing under A.R.S. §8-531 et seq. to terminate the parent-child relationship. In every other case, the natural parents still have a right to see the records of their children unless the court has expressly ruled that the parent does not have the right to see a child's school record.

Questions 1 and 3 are very similar and can be answered yes since it is obvious that the parental rights have not been severed and the parents have a right of access to the school records. Questions 2 and 4 are more difficult since the school district will have to make a more detailed inquiry into the status of the parents as the foster home situation and legal guardian situation could indicate a severance of the parent-child relationship. However, if the parental rights have not been severed, the parent or parents should be allowed to see the records. Question 5 requires the school district to inquire only into the custody order to determine if the parent has any court restrictions on his or her rights to see the pupil record. In any case, it is my opinion that the school district should resolve any question of rights in the favor of the natural parents.

The school district should also be aware that the parent who is requiring the school to allow him or her to see the records might be seeking the address of the former spouse for purposes other than reviewing the pupil record and it might be advisable to keep information about addresses private if there is any indication of such a problem. It should be noted that the implementing regulations allow the school district forty-five days to show the records to the parents after the records have been requested.

It might also be noted that the proposed regulations by the Department of Health, Education and Welfare require the school district, at least annually, and in the language of the parent, to give notice of the types of records and the information contained therein that the school keeps, the names and position of the official responsible for the maintenance and the type of records kept, the policies of the institution for reviewing and expunging the record, the access rights of the parents, the procedure for challenging the content of the records, the cost charged for reproducing copies of the record and other similar information. It also states that a parent who has a question about the contents of the records, has a right to a show cause hearing before an impartial hearing officer to determine if the records should be changed or supplemented.

A copy of this opinion in being sent to the Attorney General for his concurrence or revision.

Very truly yours,

MOISE BERGER
MARICOPA COUNTY ATTORNEY

Q. Dale Hatch
Deputy County Attorney

92a/6-8

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

February 2, 1976

Mr. Hadley Thomas
Associate Superintendent
State Department of Education
1535 West Jefferson
Phoenix, Arizona 85007

Dear Hadley:

As you are aware, the privacy of student records and access to those records is governed by Arizona and federal statutory law. The Arizona statutory provisions are found in A.R.S. §§ 15-151 et seq. The federal legislation is contained in 20 U.S.C. § 1232g, which is commonly referred to as the "Family Educational Rights and Privacy Act of 1974".

As we recently discussed, the Act, paragraph (e) of 20 U.S.C. § 1232g, provides as follows in pertinent part:

> No funds shall be made available under any applicable program unless the recipient of such funds informs the parents of students, or the students, if they are eighteen years of age or older, . . . of the rights accorded them by [the Act].

Consequently, it is incumbent upon all school districts who are receiving federal educational funds, in order to preclude any cutoff of those funds based upon a failure to comply with the Act, to inform their students and the parents of their students concerning the rights accorded them under the Act. In order to assure compliance, it is suggested that you advise all of the State's school districts to send out a memorandum to their students and their students' parents.

The memorandum should include substantially the following information. First, it should state that students and their parents are accorded certain rights under the federal legislation commonly known as the "Family Educational Rights and Privacy Act of 1974". Secondly,

it should briefly describe the rights accorded the students and their parents, such as the right of the parents to access to their children's school records. It should state that student records are made confidential, subject to release only in the manner and to the persons described in the Act. It should also state that the parents have a right to challenge the accuracy of their children's records and are entitled to a hearing with respect to that challenge, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the students.

Should you have any questions concerning the foregoing, please let me know.

Sincerely,

BRUCE E. BABBITT
Attorney General

ALAN S. KAMIN
Assistant Attorney General

ASK:mc

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

May 18, 1976

Mr. Hadley A. Thomas
Associate Superintendent
Arizona Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Dear Mr. Thomas:

Your letter of December 23, 1975 requested an opinion on whether the completion, by schools of this State, of the Arizona Department of Economic Security's verification-of-attendance form would violate the policy protecting the confidentiality of student records embodied in Arizona, A.R.S. § 15-151 et seq., and federal law, 20 U.S.C. § 1232g. The form in question solicits verification of information regarding the names of a specifically identified student's parents, the student's age and grade in school, and solicits additional information regarding the number of days the student has attended school and the number of days he or she may have been absent from school.

The respective federal and state legislation imposes upon the custodians of "pupil records,"[1/] the alternate and apparently mutually exclusive duties of (a) permitting access to the records to persons so authorized, such as parents, and (b) otherwise maintaining the confidentiality of the protected information contained in those records. Because of the similarity between the two bodies of law, we will discuss primarily state law, and refer to

---

1/ The federal act utilizes the term "education records," 20 U.S.C. § 1232g(a)(4)(A), and the state act utilizes the term "pupil records," A.R.S. § 15-151.2; however, there does not appear to be any pertinent substantive difference between the two definitions.

federal law only where specifically necessary.[2/]

A.R.S. § 15-151.2 defines "pupil record" as:

> . . .[a]ll the information of a personal nature on the pupil recorded and retained by the school and which is used or expected to be used in whole or in part by the school or any other school or agency. Pupil records shall not be construed to include the work notes of a teacher or other professional unless such notes are used or expected to be used by anyone other than the professional. (Emphasis added.)

The information solicited by the form in question would apparently fall within this broad definition, and, hence, is subject to the confidentiality protection afforded under the statute.

In this regard, A.R.S. § 15-152 provides that:

> Pupil records are considered professional and confidential and shall be available under the following circumstances:
>
> 1. To the parents or guardian of the pupil, unless a parent's parental rights have been severed

---

[2/] It should be noted at the outset that federal law requires that "[n]o [federal] funds shall be made available under any applicable program to any educational agency or institution which has a policy of permitting the [unauthorized] release of education records . . ." 20 U.S.C. § 1232g(b)(1).

Although disclosure is authorized under the federal act to state agencies "to wh[ich] such information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1975 . . .," 20 U.S.C. § 1232g(b)(1)(E), the verification-of-attendance form is not specifically required to be completed by state statute. See A.R.S. § 46-201.

by a court.

2. To the professional staff of the school district in which the information was obtained.

3. In accordance with written instructions of a parent or guardian to transfer the records to another school, institution or agency.

4. To any state or federal agency as long as such records do not identify the student and upon the approval of the local school district board.

5. With respect to grade transcripts, to any other school or educational institution to which the student is attending or has applied for admittance.

6. To a pupil or person over the age of eighteen whose records are maintained by the school.

Consequently, unless the release of the information solicited by the verification-of-attendance form is authorized by one of the subdivisions of this statute, it would appear that the schools cannot lawfully complete the form or otherwise disclose the information it solicits.

Subdivisions 1, 2, 5 and 6 are clearly inapplicable to the nature of disclosure contemplated by the verification-of-attendance form; hence, they do not authorize its completion by the schools. Subdivision 4, on the other hand, specifically authorizes disclosure of information to state and federal agencies; however, it also expressly provides that

disclosure may be made only "as long as such [disclosure does] not identify the student . . ."3/ Obviously, the form in question does not satisfy this requirement; consequently, it would appear that subdivision 4 would not authorize the schools of this State to complete the form. Subdivision 3, on the other hand, authorizes the "transfer" of records to other agencies in accordance "with the written instructions of a parent or guardian . . ." Similarly, the federal law permits access to state agencies and others upon "the written consent of [the student's] parent . . ."

In this regard, every applicant for benefits from the Department of Economic Security with respect to whose children a verification-of-attendance form is requested signs as a part of his or her application a statement which is referred to as the "Statement of Truth." It provides:

> I (the undersigned applicant) being duly sworn on my oath, depose and say:
>
> > The foregoing entries were made by me, or persons authorized by me_____
> > I agree to furnish truthfully any additional information needed, and to notify the Department of Economic Security of any and all changes in my circumstances. I understand that failure to do so may result in liability to repay any assistance I have received, and I understand that there are serious penalties for fraudulent statements in connection with an application for public assistance. I

3/ Both the fact that the Legislature has authorized the disclosure of pupil records to other governmental agencies pursuant to specifically defined conditions and the language by which the Legislature did so; namely, "as long as such records do not identify the student . . ." (emphasis added), strongly indicate that it was the intent of the law to prohibit the disclosure of the protected information to other governmental agencies, including the Department of Economic Security, unless the express conditions are satisfied.

> authorize the Department of Economic Security to investigate my eligibility and to contact any sources of information they select for that purpose. I affirm that my right to appeal and for a fair hearing, as explained in the informational material given to me is understood by me. (Emphasis added.)

The question posed by your request, therefore, resolves itself into the narrower question of whether or not the execution of this statement by a parent applying for welfare assistance constitutes the "written consent" or "written instructions" of the parent to the school, such as is required to authorize the disclosure of the information solicited with regard to his or her children.

The literal requirements of the law require only that the consent to disclosure or the instructions authorizing disclosure be written. The Statement of Truth form, although written and signed by the applicant, purports to "authorize the Department of Economic Security to investigate [the applicant's] eligibility and to contact any sources of information they [sic] select for that purpose . . ." (Emphasis added.) It is noteworthy that this form does not authorize sources contacted by the Department of Economic Security to disclose information in their possession; it merely authorizes the Department of Economic Security to contact sources and undertake its own investigation. Thus, it would appear that the Statement of Truth, notwithstanding its otherwise broad provisions, would not itself constitute written consent or instructions authorizing disclosure, and, hence, does not literally qualify under the statutory exceptions to the general rule prohibiting the disclosure of pupil records.

Additionally, it would appear that the policy of safeguarding the confidentiality of student records, upon which the state and federal legislation was based, as is indicated by the expressed blanket requirement of protecting confidentiality subject only to specifically enumerated exceptions would require an instruction or consent to disclose confidential information the nature of which is more specific than that contained in the Statement of Truth. Indeed, this observation is affirmatively indicated in the federal law insofar as it expressly defines the nature

of consent required. It provides that there must be:

> written consent from the student's parents specifying records to be released, the persons for such release, and to whom, and with a copy of the records to be released to the student's parents . . .
> 20 U.S.C. § 1232g(b)(2)(A).
> (Emphasis added.)

The Statement of Truth cannot be deemed to satisfy these requirements.

It is, therefore, the opinion of this office that the disclosure of information sought by the Department of Economic Security from the schools of this State, albeit in and of itself an otherwise proper inquiry, is prohibited by the state and federal laws protecting the confidentiality of pupil records. As indicated, we base our opinion primarily upon the insufficiency of the consent to disclosure within the Statement of Truth found as part of the application for welfare assistance.

Our office is in contact with the Department of Economic Security, and we are endeavoring to draft a consent to disclosure which will adequately authorize the schools of this State to complete the verification-of-attendance form. Until the consent is modified, however, you are advised not to disclose the confidential information solicited by the form.

Sincerely,

BRUCE E. BABBITT
Attorney General

BEB:FGF:gs

NOTE: This opinion amends A. G. Opinion # R75-610

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

April 14, 1976

Mr. Hadley Thomas
Associate Superintendent
Arizona Department of Education
1535 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Thomas:

Our earlier review of the Arizona Special Education Census (ASEC) program considered its validity with respect to statewide utilization and statewide data collection. Thus, the planned enlargement of the program from pilot stages to full implementation has been previously considered and approved by this office.

The nature of expansion to which our caveat was and still is intended to be addressed, however, relates to an expansion of the use or access of the data collected upon implementation of the program. Our prior approval of the ASEC data collection and storage system was based in large part upon our view that the Joint Legislative Special Education Committee has been somewhat exempted from the statutes protecting the confidentiality of student records, A.R.S. § 15-151, et seq.; 20 U.S.C. 1232(g), Pub. L. 93-568; thus, our approval of the program extends only with respect to the use of the data by the Joint Committee.

We reiterate that it is the opinion of this office that the ASEC computer program, as described to us by personnel from your office, embodies adequate measures designed to protect the confidentiality of student records and that in view of the important need of the Joint Legislative Special Education Committee for the data the program will provide, statewide implementation of the program can proceed.

Sincerely,

Bruce Babbitt

BRUCE E. BABBITT
Attorney General

BEB:FGF:jpr

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

January 14, 1976

Mr. Hadley A. Thomas
Associate Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Thomas:

In response to your recent request regarding an opinion of law concerning the following questions:

> (1) Do the procedures and policies [of the Arizona Special Education Census (ASEC) computer program] comply with Arizona Revised Statutes which relate to student records?
>
> (2) Do the procedures and policies protect the confidentiality of the information in relation to established regulations governing student records?

our research indicates the state of the law to be as follows:

A.R.S. §15-151 defines "pupil records" as:

> . . . . . all the information of a personal nature on the pupil recorded and retained by the school and which is used or expected to be used in whole or in part by the school or any other school or agency . . . .

A.R.S. §15-152 mandates that pupil records be considered ". . . professional and confidential and shall be available . . ." to specified individuals and/or groups, including parents, professional staff, and:

> . . . . any state or federal agency as long as such records do not identify the student and upon the approval of the local school district board . . .

In short, the act alternatively requires that pupil records be made available to authorized persons and/or groups and be kept confidential with respect to unauthorized persons and/or groups.

The ASEC system will collect and store data relating to the characterization of, treatment afforded to, and progress of exceptional students. This data is clearly the type of personal information which is included within the literal definition of pupil records set forth in the act; consequently, the law requires that, other than with respect to authorized individuals and/or groups, it be kept confidential.

The heart of the ASEC system is the data collection sheet (Form ADE 35-101F-75, enclosure 1). It is to be filled out in duplicate by a responsible official in each school at which an exceptional student is in attendance. One copy is to be retained by the school and filed with the student's other records. The same procedures regarding access and confidentiality of pupil records generally will consequently be applicable with respect to this copy of the form, and those procedures should insure compliance with the law. The other copy will be processed into the ASEC system; and its existence and use raise most of the issues regarding confidentiality and have hence received the most attention and consideration of this office.

Initially, it should be noted that use of the data by the Joint Legislative Special Education Committee is specifically authorized by A.R.S. §15-152.4, provided that district board approval is obtained and the identities of specific students are not disclosed. Insofar as the data collection forms will be distributed and disseminated by district boards for use by the schools, approval of local district boards can be said to have been tacitly obtained. Nevertheless, it is suggested that a written expression of approval be obtained from each applicable district board. Additionally, although the Joint Legislative Special Education Committee will be able to isolate their analysis of the special education problem to individual case histories, since reference to individuals can and will be made only with respect to an encoded identification number, student identities are not disclosed.

The statute does not define the scope or extent of the precautions which must be taken to insure the confidentiality of pupil records. Because of its practical impossibility, it is doubtful that the duty to maintain the confidentiality of pupil records is absolute. In this regard we are, of course, cognizant of the fact that the mere existence of the stored data creates the possibility that unauthorized access to it can be obtained. Nevertheless, because the ASEC program embodies the precautions discussed hereinafter, and because of the serious and important need which the Joint Committee has for the data provided by the system, it is our opinion that the ASEC system for data collection and storage may be implemented.

The essence of the security measures which will be taken to secure the confidentiality of the processed data relates to the use of a SOUNDEX identification number by which individual exceptional students will be identified. A SOUNDEX number is a computerized numerical equivalent of the consonnant components of an individual's first and last names, and middle initial, if available. The names of several different persons can generate the same SOUNDEX number[1] so that information regarding a student's age, sex, school and school district and an additional mathematical variable known as "check digit" will be used to embellish a student's SOUNDEX number so as to produce a unique identification number by which a student can be referred. All of the data stored in the ASEC data storage bank will have reference only to various SOUNDEX identification numbers. Since the SOUNDEX identification number cannot be converted back into its alphabetical source, either by an individual or by an individual assisted with present day computer technology, confidentiality of the data is adequately safeguarded once it is stored.

During the input processing of the data collection forms, it is also our opinion that the confidentiality of the data in the system has been adequately protected. Initially, although we have not been informed of the specific transportation method to be utilized to move the completed forms to the processing center, you have assured us that customary security provisions, such as the use of a bonded messenger service, will insure that confidentiality will be maintained prior to the time when actual processing procedures are initiated. We understand that during processing the system requires that the forms themselves be destroyed after the data from them has been entered into the computer operation. Additionally, the input processing procedure embodies the following multi-faceted data isolation mechanism which will prevent the breach of the confidentiality of the information during processing.

In those school districts which are large enough to have their own computer capability, schools will be furnished by the school district with the SOUNDEX numbers of the students for whom data collection forms must be filled out. There will be only <u>one</u> printout of the conversion made. It will be forwarded directly and only to each school.[2] In those school dis-

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1/ For example, the names John Hill, Joan Healy, Jean Hill, Jim Holly, Jeanne Howley, Jan Haley and June Hill all generate the same SOUNDEX number.

2/ As indicated earlier, the knowledge of a SOUNDEX number without the other information from which the SOUNDEX identification number is generated would not enable an individual to determine the identity of the student to whom the identification number relates.

tricts which are not large enough to have their own computer capability, the forms must be completed using each student's name for identification. However, each completed form has its own serialized number which upon processing is used as a reference for the input and storage of the data. Names are not used. After the confidential data has been entered into the computer with respect to the form number from which it was obtained, a separate input operation will relate the student's name to the correct form. Then, after the name of the student has been converted by the computer into its corresponding SOUNDEX digits, checked and erased, the confidential data and the SOUNDEX identification number can be correlated to each other by virtue of the common form number. Thus, the confidentiality of the student's identity is thereby maintained.

A telephone converation on December 7, 1975, between you and this office disclosed that use of the term "regulations" in the second question was intended to refer to the body of law derived from "federal administrative regulations" and that it was your intention to evoke a consideration by this office of the ASEC system with respect to federal law. Our research indicates that there are no regulations which have been adopted by the federal government dealing with the question of the confidentiality of student records; there is, however, a statute which has pertinence to this issue. Public Law 93-568, 88 Stat. 1858, amending 20 U.S.C. 1232 g, December 31, 1974, effective and retroactive to November 19, 1974, imposes virtually the same alternative duties of permitting access to "student records" to specific authorized individuals and/or groups and keeping the same student records confidential with respect to unauthorized persons and/or groups. The text of the federal statute differs from the text of the Arizona law and this difference in language may become significant in some future context.[3] The purpose and substance of the two provisions appear to be identical, however, and the precautions taken to protect the confidentiality of students discussed with respect to Arizona law, supra, similarly satisfy the requirements imposed by federal law. There is one difference, however, which deserves attention.

3/ For example, a parent who wishes to challenge the accuracy of a pupil record must be afforded a hearing to do so in accordance with undefined regulations under the federal statute, 20 U.S.C. 1232 g(a)2 whereas, the state version permits only a "written response to any disputed item." A.R.S. §15-154.

The federal law in pertinent part provides that:

> (b)(1) No funds shall be made available . . . to any educational agency or institution which has a policy or practice of permitting the release of education records . . . of students without the written consent of their parents to any individual, agency or organization other than . . . .
>
> * * *
>
> (F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents . . . and such information will be destroyed when no longer needed for the purposes for which it is conducted. . . . (Emphasis added.)

Thus, it would appear that the federal legislation would require that the data be destroyed when it is no longer needed by the Joint Legislative Special Education Committee for the purposes for which its access is authorized.

One caveat must be expressed. The evaluation of the ASEC data system has been made by this office only with respect to the system as described by your experts and as discussed in this opinion. Naturally, we do not have the expertise to determine whether or not the ASEC program will do what it is intended to do or perform in accordance with its design.

Should you have any further questions regarding the use or operation of the program or the data, please consult with this office prior to enlarging its application or purpose. Additionally, providence would urge that your office monitor the functioning of the ASEC system so as to enable it to discover any abuse or misuse of the stored data.

Sincerely,

BRUCE E. BABBITT
Attorney General

BEB:FGF:dl
Enclosure

SPECIAL EDUCATION CENSUS

1975 - 1976

PLANNING FOR SPECIAL EDUCATION IN ARIZONA

DIVISION OF SPECIAL EDUCATION
1535 W. JEFFERSON ST.
PHOENIX, ARIZONA 85007
PHONE (602) 271-3183

(SAMPLE)

DISTRICT NAME _____

_____ OF _____ COUNTY

SCHOOL NAME _____

DISTRICT OF RESIDENCE COMPLETE ONLY IF DIFFERENT FROM DISTRICT OF ATTENDANCE

DISTRICT NAME _____ NUMBER _____

COUNTY _____

PERSON COMPLETING FORM _____ (LAST NAME) (FIRST NAME) (POSITION) (DATE)

No.

STATUS (CHECK ONE)
- ☐ 1. NEW ENTRY
- ☐ 2. WITHDRAWAL
- ☐ 3. UPDATE

STUDENT IDENTIFIER
SOUNDEX NUMBER
IF SOUNDEX NUMBER IS UNAVAILABLE ENTER NAME BELOW (NUMBER WILL BE ASSIGNED AND THE NAME DESTROYED)
LAST _____ FIRST _____ M.I. _____

BIRTH DATE MONTH DAY YEAR

SEX
- ☐ 1. MALE
- ☐ 2. FEMALE

RACIAL INFORMATION (CHECK THE MOST APPROPRIATE CATEGORY)
- ☐ 1. WHITE
- ☐ 2. BLACK
- ☐ 3. ORIENTAL
- ☐ 4. SPANISH SURNAME
- ☐ 5. AMERICAN INDIAN
- ☐ 6. OTHER

ETHNIC BACKGROUND
- ☐ 1. HISPANIC
- ☐ 2. NON HISPANIC

FOR CODING USE
DIST _____
CITY _____
TYPE _____
SCH _____
R DIST _____
R CTY _____

CLASSIFICATION (CHECK ONE)
- ☐ 1. EMH - EDUCABLE MENTALLY HAND.
- ☐ 2. EH - EMOTIONALLY HANDICAPPED
- ☐ 3. HH - HEARING
- ☐ 4. HHD - HOMEBOUND/HOSPITALIZED
- ☐ 5. MH - MULTIPLE HANDICAPPED
- ☐ 6. PH - PHYSICALLY HANDICAPPED
- ☐ 7. TMH - TRAINABLE MENTALLY HAND.
- ☐ 8. SLD - SPECIFIC LEARNING DISAB.
- ☐ 9. SPH - SPEECH
- ☐ 10. VH - VISUALLY HANDICAPPED
- ☐ 11. GFT - GIFTED

TYPE OF SERVICE (CHECK ONE)
- ☐ 1. RESOURCE
- ☐ 2. SELF CONTAINED
- ☐ 3. HOME/HOSPITAL
- ☐ 4. OTHER (LIST) _____

SERVICE PROVIDED BY
- ☐ 1. PUBLIC SCHOOL
- ☐ 2. PRIVATE SCHOOL
- ☐ 3. STATE AGENCY
- ☐ 4. OTHER (LIST) _____

LEVEL OF ENROLLMENT
- ☐ 1. KINDERGARTEN
- ☐ 2. ELEMENTARY
- ☐ 3. HIGH SCHOOL
- ☐ 4. OTHER (LIST) _____

SPECIAL EDUCATION STATE AID
- ☐ 1. REPORTED FOR STATE AID
- ☐ 2. NOT REPORTED FOR STATE AID

REGISTER NUMBER _____

AVERAGE WEEKLY HOURS SPENT IN SPECIAL EDUCATION PROGRAM
_____ NEAREST HOUR

CLASS ROOM ENTRY: DATE OF ENTRY MO YR

- ☐ 1. NEW STUDENT NOT PREVIOUSLY IN SPECIAL EDUCATION
  - a. DATE OF REFERRAL FOR SERVICE ..... MO DAY YR
  - b. DATE OF OFFICIAL PLACEMENT ..... MO DAY YR
  - c. DATE OF OFFICIAL ENROLLMENT ..... MO DAY YR
- ☐ 2. STUDENT CARRIED OVER FROM PREVIOUS YEAR

TRANSFER NAME OF PREVIOUS PROGRAM (IF KNOWN) _____

- ☐ 3. FROM ANOTHER SPECIAL EDUCATION CLASS IN THE DISTRICT.
- ☐ 4. FROM ANOTHER SCHOOL DISTRICT'S SPECIAL EDUCATION PROGRAM IN THE STATE.
- ☐ 5. FROM ANOTHER SPECIAL EDUCATION PROGRAM OUT OF STATE.
- ☐ 6. FROM A STATE OPERATED SCHOOL IN THE STATE.
- ☐ 7. FROM A PRIVATE SCHOOL IN THE STATE.
- ☐ 8. SPECIAL EDUCATION STUDENT RETURNING TO SCHOOL AFTER A PREVIOUS WITHDRAWAL.
- ☐ 9. NEW STUDENT ALSO RECEIVING SERVICES IN ANOTHER SPECIAL EDUCATION PROGRAM.
- ☐ 10. OTHER _____ (PLEASE SPECIFY)

CLASSROOM WITHDRAWAL DATE OF WITHDRAWAL MO YR

- ☐ 1. TRANSFERRED TO REGULAR EDUCATION.
- ☐ 2. TRANSFERRED TO A DIFFERENT SPECIAL EDUCATION PROGRAM IN THE DISTRICT.
- ☐ 3. TRANSFERRED TO A DIFFERENT DISTRICT IN THE STATE.
- ☐ 4. TRANSFERRED OUT OF STATE.
- ☐ 5. DROPPED OUT OF SCHOOL.
- ☐ 6. GRADUATED FROM SCHOOL.
- ☐ 7. TRANSFERRED TO A STATE OPERATED SCHOOL.
- ☐ 8. TRANSFERRED TO A PRIVATE SCHOOL.
- ☐ 9. TRANSFERRED OUT OF THIS CLASSROOM BUT STILL RECEIVING SERVICES IN ANOTHER SPECIAL EDUCATION PROGRAM.
- ☐ 10. OTHER _____ (PLEASE SPECIFY)

NAME OF NEW PROGRAM (IF AVAILABLE): _____

Form ... © ... Reproduction Prohibited ... Public Law 93-380 Section 617(a)(5)

GUIDELINES
STATE OF ARIZONA
SCHOOL DISTRICTS
RETENTION AND DISPOSAL OF RECORDS

The retention and disposal of records require good judgment, proper planning, and understanding of future usefulness of records. The former process used to dispose of records was:

Agency	Action
District	Submits "Records Disposition Request"
Department of Administration-Library Archives & Public Records Division	Prepares a "Disposition Authorization" from the "Records Disposition Request"
Board of History and Archives-Auditor General	Approves "Disposition Authorization"
Director, Library Archives & Public Records Division	Approves "Disposition Authorization"
Attorney General	Approves "Disposition Authorization"
Department of Administration-Library Archives & Public Records Division	Sends approved "Disposition Authorization" to District
District	Destroys records as authorized Sends a "Certification of Destruction of Records" to the Library Archives & Public Records Division
Department of Administration-Library Archives & Public Records Division	Files "Certification of Destruction"

The "Records Retention/Disposal Schedule" was developed to simplify the process of destroying records and eliminate the uncertainty of how long to keep records.

STATE OF ARIZONA
SCHOOL DISTRICTS
RETENTION AND DISPOSAL OF RECORDS

Records listed on the Schedule may be destroyed if the proper time period has elapsed. The new process for disposal of records is as follows:

District	1. Annually review records to determine which records to dispose of in accordance with the Schedule. 2. Destroy records as authorized 3. Prepare "Certification of Destruction of Records" and send to Library Archives & Public Records Division
Department of Administration- Library Archives & Public Records Division	File "Certification of Destruction of Records"

If an audit has been initiated, or if questionable items have been uncovered by audit, the District may not destroy records until audit clearance.

If a record is not listed on the Schedule, a letter should be submitted to the Department of Administration, Library Archives & Public Records Division, requesting that the record be added to the Schedule.

STATE OF ARIZONA
SCHOOL DISTRICTS
RECORDS RETENTION/DISPOSAL SCHEDULE

Record Description	Number of Years: Microfilm & Destroy	or	Destroy without Microfilming	or	Retain Permanently
Minutes of the Board (also microfilm for security)					X
General Ledger					X
General Journal	3 yrs.		10 yrs.		
Revenue Journal	3 yrs.		10 yrs.		
Expenditure Journal	3 yrs.		10 yrs.		
Subsidiary Ledgers					
Accounts receivable			3 yrs.		
Supplies inventory			2 yrs.		
Property, plant and equipment	3 yrs.				X
Accounts payable			3 yrs.		
Revenue			3 yrs.		
Expenditure			3 yrs.		
Source Documents					
Billing advices			3 yrs.		
Federal lunch reimbursement	3 yrs.		5 yrs.		
Cash receipt books			3 yrs.		
Advices of deposit			3 yrs.		
Revenue transmittal forms			3 yrs.		
A.D.A. registers	3 yrs.				X (A.R.S. 15-201.6)
Lunch tickets			1 yr.		

(Rev. 75)

STATE OF ARIZONA
SCHOOL DISTRICTS
RECORDS RETENTION/DISPOSAL SCHEDULE

Record Description	Number of Years: Microfilm & Destroy	or	Destroy without Microfilming	or	Retain Permanently
Source Documents (Continued)					
Employee time sheets			3 yrs.		
Pre-payroll registers			3 yrs.		
Purchase requisitions			3 yrs.		
Warehouse requisitions			3 yrs.		
Purchase orders			3 yrs.		
Vendor invoices - Expenses, other than capital outlay			3 yrs.		
Capital outlay	3 yrs.				X
Receiving reports			3 yrs.		
Packing slips			3 yrs.		
Bills of lading			3 yrs.		
Shipping dockets			3 yrs.		
Vouchers			3 yrs.		
Supporting Schedules, Summaries, & Statistical Data					
District policies	AFTER SUPERSEDED		3 yrs.		
Bank statements			7 yrs.		
Canceled checks			7 yrs.		
Student population surveys	3 yrs.		15 yrs.		
Student enrollment records	3 yrs.		15 yrs.		
District property valuations			3 yrs.		

STATE OF ARIZONA
SCHOOL DISTRICTS
RECORDS RETENTION/DISPOSAL SCHEDULE

Record Description	Number of Years: Microfilm & Destroy	or	Destroy without Microfilming	or	Retain Permanently
Supporting Schedules, Summaries, & Statistical Data (Continued)					
Federal project applications	AFTER PROJECT ENDS		5 yrs.		
Federal project approvals	AFTER PROJECT ENDS		5 yrs.		
Federal project guidelines	AFTER PROJECT ENDS		5 yrs.		
Log of lunch tickets issued			3 yrs.		
Lunch report - weekly tickets			3 yrs.		
Daily cash receipts summary			3 yrs.		
Daily summary of lunches and milks served			3 yrs.		
Federal monthly summary of lunches and milks served			3 yrs.		
Payroll summaries			3 yrs.		
Budget summary reports			3 yrs.		
Cash balance reports (from County School Superintendent and/or County Treasurer)			2 yrs.		
Personnel File of Terminated Employees					
Application	AFTER TERMINATION	5 yrs.			10 yrs.
W-4 Forms	" "				5 yrs.
Withholding authorizations	" "				5 yrs.
Staff evaluation reports	" "	5 yrs.			10 yrs.
Employment contracts	" "	5 yrs.			10 yrs.

STATE OF ARIZONA
SCHOOL DISTRICTS
RECORDS RETENTION/DISPOSAL SCHEDULE

Record Description		Number of Years: Microfilm & Destroy	or	Destroy without Microfilming	or	Retain Permanently
Personnel File of Terminated Employees (Continued)						
Employment authorizations	AFTER TERMINATION			5 yrs.		
Termination notices	" "	5 yrs.		10 yrs.		
Salary and pay raise authorizations	" "			5 yrs.		
Loyalty oath	" "			5 yrs.		
State retirement enrollment	" "			5 yrs.		
Industrial injury	" "			5 yrs.		
Personnel card	" "	5 yrs.		10 yrs.		
Student Records						
Teachers grade book	AFTER GRADUATION			5 yrs.		
Cumulative record folder	" "			5 yrs.		
Health record	" "			5 yrs.		
Permanent record card	" "	5 yrs.				X
Attendance cards	" "			5 yrs.		
Other						
Bids (non-capital outlay expenditures)				3 yrs.		
Bids (capital outlay expenditures)		3 yrs.				X
Bond surveys and bonding capacities		3 yrs.				X

STATE OF ARIZONA
SCHOOL DISTRICTS
RECORDS RETENTION/DISPOSAL SCHEDULE

Record Description	Number of Years: Microfilm & Destroy	or Destroy without Microfilming	or Retain Permanently
Other (Continued)			
Election surveys and results	3 yrs.		X
Fiscal year budget			X
Financial statements	3 yrs.		X
Audit reports	3 yrs.		X
Contracts -			
Real estate and construction			X
Lease and lease-purchase AFTER	3 yrs.	10 yrs.	
Employment EXPIRATION	5 yrs.	10 yrs.	
Other	3 yrs.	10 yrs.	
Deeds			X
Election Records - School Board Members			
Nomination papers AFTER ELECTION		5 yrs.	
Affidavits " "		5 yrs.	
Tally Sheet and Balance " "		5 yrs.	